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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,821	10/07/1999	PHILIP KELLER	52352-356	2466

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EXAMINER	
BOCURE, TESFALDET	
ART UNIT	PAPER NUMBER
2611	

MAIL DATE	DELIVERY MODE
04/16/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/413,821	KELLER, PHILIP	
	Examiner	Art Unit	
	Tesfaldet Bocure	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☒ Claim(s) *9 and 10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-10 are pending in this Application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al., Cheng hereinafter (US patent number 6,377,666).

Cheng teaches a transceiver unit (fig. 1B) having a transmitter (115) and receiver (117) connected to existing residential wiring (see abstract), where the transmitting section comprising: a line driver (207) for transmitting signal over the existing twisted wires being controlled by a controller (113 in fig. 1B and 201 in figure 2); said controller

controlling the power lever of the line driver through elements 203 and 205 according to the power level for transmitting the signal, high and law power levels (DLC) as in claims 1,3 and 5.

Further to claims 2, 4 and 8, Cheng also teaches that;

the detection of the power level is determined by the controller once the line circuit is activated (see col. 4, lines 40-50) and reads on the claimed controlling during the initialization of the transceiver in claim 2; the system of Cheng is to accommodate the need of home networking, including computers and printer to share the existing wire line and reads on the claimed specification HPNA in claim 4; and the receiver (117) having a line receiver (209) for receiving signal as in claim 8.

What Cheng fails to teach is that the controller having a comparator (in claims 6 and 7) for comparing the high and low voltage levels with a predetermined threshold value in order to generate the driving high and low power level as in claims 1,5-6.

However, it is obvious to one of an ordinary skill in the art that the controller of Cheng to have a comparator for generating the high and low power to accommodate two modes of operation (see figs 4A and 4B and col. 8) at the time the invention was made.

Response to Amendment

5. In response to Applicant's argument that:

> Recent Examination Guidelines for Determining Obviousness and decisions of the USPTO Board of Appeal and Interferences in *Ex parte Smith,* Appeal 2007-1925 (June 25, 2007) and *Ex parte Catan,* Appeal 2007-0820 (July 3, 2007) that follow the Supreme Court's decision in *KSP Int'l Co. v. Teleflex Inc.,* 127 S.Ct. 17127 (2007) put forth an obviousness analysis that emphasizes a functional approach based on *Graham v. John*

Deere factors. As stated in *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966), obviousness under 35 U.S.C. §103 must be determined by (1) analyzing the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art, and (4) analyzing secondary considerations.

Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. In response to Applicant's argument that the art of record, Cheng et al., in which Examiner relied on in rejecting claims 1 and 5 does not teach that "the controller do not compare a DC level set at the output of the output driver with a predetermined threshold level---"

Examiner agreed that Cheng et al. does not show that the controller controlling the power level by comparing with the threshold level. However, as indicated above in rejecting claims 1 and 5, it is obvious that the comparator should have an upper and lower limit (claimed threshold signal) in order the driver to drive the output signal in each mode of operation—first and second power modes. It should also be noted that Cheng shows a feed forward technique of controlling the modes of the driver, i.e., the controller (201) controls the driver directly rather than from the output of the driver, feedback as claimed. However, the final output, whether using a feed back as claimed

or feedword as is the case in the teaching of Cheng, a controlled line driver according to the signal level.

Allowable Subject Matter

7. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tesfaldet Bocure whose telephone number is (571) 272-

3015. The examiner can normally be reached on Mon-Thur (7:30a-5:00p) & Mon.-Fri (7:30a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammed H. Ghayour can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tesfaldet Bocure/

Primary Examiner, Art Unit 2611

/T. B./

Primary Examiner, Art Unit 2611

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	09/413,821	KELLER, PHILIP	
	Examiner	Art Unit	
	Tesfaldet Bocure	2611	